No. 05-1473

FILED
SEP 10 2006
OFFICE OF THE CLERK
SUPREME COURT, U.S.

IN THE

Supreme Court of the United States

Daniel R. Knapp

Petitioner

v.

Lonnie R. Cross IV

Respondent

On Petition For Writ of Certiorari
To The Georgia Supreme Court

SUPPLEMENTAL BRIEF TO PETITION FOR WRIT OF CERTIORARI

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STATEMENT OF CASE

I. Summary of Supplemental Facts

As A Supplement to Those Summary of Facts Already Filed In the Petition for Writ of Certiorari by Petitioner On May 15, 2006

This Supplemental Brief is prepared in response to other intervening matter not available at the time the Petitioner originally filed his Petition for Writ of Certiorari on May 15, 2006.

The Petitioner originally argued on May 15, 2006 that the Petitioner was denied a fair trial and due process on 12/1/04 in violation of his United States Constitution Fifth Amendment when the trial court judge did not act as a wholly disinterested and impartial trier of fact when conducting a 12/1/04 hearing. In the May 15, 2006 Petition, the Petitioner cited multiple instances where the trial court judge's bias existed both before and after the 12/1/04 hearing, creating the appearance of pervasive bias by the trial court judge against the Petitioner.

This Supplemental Brief is prepared in response to other intervening matter not available on May 15, 2006 so that it may supplement the original petition.

The other intervening matter which illustrates the trial court judge's continuing and pervasive bias against the Petitioner is summarized in an objective manner and is divided into six distinct areas as follow in entries **A through F**:

A. 6/27/06 Rule Nisi: A Rule Nisi was issued on June 27, 2006 by a separate, independent previously uninvolved judge, Judge Robert Fuller, establishing a July 26, 2006 hearing on a Motion for Contempt **originally filed by the Petitioner on November 9, 2004** in preparation for the original 12/1/04 hearing. A copy of the Petitioner's 11/9/04 Motion for Contempt and the 6/27/06 Rule Nisi are included in pertinent part herein. Admittedly, the Petitioner dismissed the Motion without prejudice on 12/1/04, but the trial court judge's having never issued an Order Concerning Motion for Contempt is indicative of the apathy and pervasive bias the trial court judge maintains for the Petitioner in this case. To date, the trial court judge has still not issued an Order Concerning Motion for Contempt for the Petitioner's 11/9/04 Motion for Contempt.

B. 7/26/06 Hearing Abandoned : A hearing convened by the June 27, 2006 Rule Nisi was abandoned on 7/26/06 by the original 12/1/04 trial court judge, Judge Robert Mitchum, without notice to the Petitioner. No court Order resetting the hearing has been issued to the Petitioner to date. The Respondent was not present for the 7/26/06 hearing but the Respondent's wife did give birth to a child either on 7/26/06 or shortly thereafter. Such abandonment of the scheduled 7/26/06 hearing is seemingly irregular, especially considering no Order Resetting Hearing has ever been issued to date.

C. 7/26/06 Continued Claims of a Remittitur: During the Petitioner's appearance in court before Judge Robert Mitchum on 7/26/06, Judge Robert Mitchum continued to claim that sometime before a September 6, 2005 hearing he had seen the Remittitur in this case regarding the Petitioner's appeal of the 12/1/04 hearing. The Remittitur was in fact issued by the Georgia Court of Appeals on February 16, 2006 and a copy of it is included in pertinent part herein. The trial court judge, Judge Robert Mitchum, claimed on 9/6/05 that he had originally seen the Remittitur prior to the 9/6/05

hearing as follows per the transcript included in pertinent part herein : " I got my copy a couple of weeks ago." Clearly, Judge Robert Mitchum had not seen the Remittitur a couple of weeks prior to 9/6/05 when, in fact, the Remittitur was only first issued on February 16, 2006. Claiming to have seen the Remittitur allowed the trial court judge on 9/6/05 to circumvent any claims by the Petitioner on 9/6/05, be they correct or incorrect, that monies were not yet due by the Petitioner per Georgia Court of Appeals Rule 39 staying the Remittitur and Georgia Supreme Court Rule 6 requiring payment of monies due with the return of the Remittitur to the trial court. Both rules are included in the Appendix herein in pertinent part. Making of such claims by the trial court judge about having seen a Remittitur before it was ever issued is further evidence of the trial court judge's pervasive bias in his thoughts and actions against the Petitioner.

D. 7/26/06 Impartial Judge:
On 7/26/06 the Petitioner submitted a "Question for Magistrate on Duty" similar to the Petitioner's 9/1/04 'Question for Magistrate On Duty". The 9/1/04 question is included herein, and in the Petitioner's original 5/15/06 Petition at Appendix Page "t", and the7/26/06 question is also included herein in pertinent part. Both questions related to what forms are required to void a court Order.

On 9/1/04, Judge Robert Mitchum, having then originally issued the Temporary Restraining Order on 5/18/04, took considerable offense to the Petitioner's 9/1/04 question and issued an inflammatory response to thePetitioner's 9/1/04 question by directing the Petitioner to obtain a lawyer and vacate the courtroom or face being arrested by Sheriff's Deputies who the judge had already been called to the courtroom before appearing in the courtroom. The judge indicated the Sheriff's Deputies would arrive shortly to arrest the Petitioner if the Petitioner was still in the courtroom. On 9/15/04, Judge Robert Mitchum would recall the Petitioner's

9/1/04 appearance asking the subject 9/1/04 written question as the Petitioner **"making a pest of yourself"** per the 9/15/04 transcript included in pertinent part herein.

Almost two years later, on 7/26/06, the Petitioner went before a separate Judge Michelle Knight, a judge who did not issue any of the Orders in question against the Petitioner. When Judge Knight was faced with a written question by the Petitioner about forms to void an order, Judge Knight calmly and politely directed the Petitioner to speak to the Clerk of The Court regarding what forms were appropriate, without threatening or intimidating the Petitioner about needing to leave the courtroom or face arrest.

The huge disparity in how these essentially identical questions regarding voiding a court order were handled illustrates quite well the bias against the Petitioner that the trial court judge, Judge Robert Mitchum, maintains and manifests in his thoughts and actions against the Petitioner. The Petitioner was not a "pest" on 9/1/04 as Judge Robert Mitchum had recalled on 9/15/04, but a citizen who knew that crucial evidence presented to the court on 5/18/04 had not been considered in opposition to what was stated on the face of the Order restraining the Petitioner. The Petitioner also knew that the Respondent was abusing the statute utilized to restrain the Petitioner by continually harassing the Petitioner in various manners, not the least of which was constructing a string barrier which harmed neighborhood children and later would only serve to restrict the Petitioner from using a substantial portion of the Petitioner's own real property. The Petitioner had valid concerns in questioning the restraining order in place against him on 9/1/04, but the trial court judge, Judge Robert Mitchum, merely acted in a manner consistent with intimidating the Petitioner into fleeing the courtroom.

E. Seven Year Co-Magistrate:
While the Petitioner was in attendance with his wife at the recent 7/26/06 proceedings, the trial court judge, Judge Robert Mitchum, stated during his introductory comments that he, Judge Robert Mitchum, had served as a magistrate with Gwinnett County Magistrate Court since 1987.

According to her published website biography at http://www.westernroo.com/slizlaw/fr_main.htm included in pertinent part in the Appendix herein, Jan McKinney, the Respondent's counsel, has also served as a magistrate judge for seven (7) years in the Gwinnett County Magistrate Court beginning in 1997. This would yield a retirement date from the Gwinnett County Magistrate Court for Jan McKinney in 2004, the same year Ms. McKinney made an appearance in this case.

This shared workplace relationship between the trial court judge, Judge Robert Mitchum, and the respondent's counsel, Jan McKinney, creates a foundation from which a reasonable man might reasonably question the impartiality of the trial court judge due to the potential for the judge to have a predisposition or prejudice in favor of the opposing counsel due to his immediately prior seven (7) year shared workplace relationship.

It would appear from the trial court record that the relationship between the trial court judge and opposing counsel was a sufficiently comfortable one to preclude the need for Ms. Jan McKinney to even have to file an appearance of counsel in 2004 in this case, as one is not on file.

F. Georgia Court of Appeals 5/12/06 Decisions: The Court of Appeals 5/12/06 decisions associated with 7/27/05 and 9/6/05 hearings occurring after the subject 12/1/04 hearing

were received in the mail by the Petitioner after he submitted his 5/15/06 Petition for Writ of Certiorari.

The Court of Appeals decision (A06A0119) regarding the 7/27/05 hearing appeal where the Petitioner was incarcerated for 20 days was reversed and remanded citing the fact that the trial court judge was in error for having found the Petitioner in contempt of an expired and more restrictive 5/18/04 Order after the Petitioner had only been served notice of contempt for a current and less restrictive 12/1/04 Order.

This Court of Appeals decision required a remand as the Court of Appeals lacked sufficient evidence in the appeals record to determine if the Petitioner's having re-installed a security camera to observe his own children in his own swimming pool was in criminal contempt of the unexpired 12/1/04 Order.

This Court of Appeals 5/12/06 decision did not address the overt bias against the Petitioner made apparent in the trial court judge's willingness to revive and revitalize a clearly expired Temporary Restraining Order issued 5/18/04 and expired on 6/1/05, six months from the original issue date of the 12/1/04 Permanent Restraining Order. Additionally, the Court of Appeals decision did not address the overt pervasive bias made apparent by the fact that the trial court judge was willing to go so far as to issue a Court Order incarcerating the Petitioner based on the judge's own fictional manifestation that the contempt charges where brought on the basis of the 5/18/04 Order when, in fact, the charges were clearly sought on the basis of the 12/1/04 Order.

During the 7/27/05 hearing, the trial court judge, Judge Robert Mitchum was fully informed by Petitioner's counsel, Mr. W. Mark Hill, as to the expiration of the 5/18/04 TPO (Temporary Protection Order) and as to the basis of the contempt hearing being the 12/1/04 Permanent Restraining

Order as found in the 7/27/05 transcript included in pertinent part herein as: **"Mr. Hill: ...Mr. Cross (Respondent) has asked the Court, as you know, to make this temporary into a permanent restraining order, which was granted. And my client's position, Judge, is that the TPO has gone. That's done. That's over with, and the only thing we've got here is the permanent restraining order and we're on contempt for a violation of that permanent restraining order...."** Yet, Judge Robert Mitchum, as stated, knowingly revived the expired 5/18/04 Temporary Protective Order and then knowingly allowed the court proceedings to continue under the fictional assumption that Respondent's contempt complaint was based on the 5/18/04 Temporary Restraining Order as opposed to the actual 12/1/04 Permanent Restraining Order basis in the Respondent's complaint. The Respondent's actual contempt complaint is included in pertinent part herein.

To summarize the 7/27/05 hearing, the trial court judge, Judge Robert Mitchum, therefore not only revived the expired 5/18/04 Order on 7/27/05, but fictitiously inserted the 5/18/04 Order as the basis for the contempt action on 7/27/05 when in fact the contempt action was clearly only entered into by the Respondent as a potential violation of the 12/1/04 Order. Both of these actions by the trial court judge clearly illustrate the trial court judge's willingness to proceed with a pervasive bias in his thoughts and actions against the Petitioner.

The Court of Appeals decision (A06A0697) regarding the 9/6/05 hearing was a reversal based simply on the fact that the Respondent did not seek, nor did the trial court find that the Petitioner was in contempt of the correct order, the December 1, 2004 order.

This decision by the Court of Appeals regarding the 9/6/05 hearing again fails to address the bias apparent in the trial

court judge's willingness to proceed to incarcerate the Petitioner on 9/6/05, even though the complaint sought against the Petitioner was a violation of the 5/18/04 TRO, an order which was clearly expired and clearly no longer relevant to the Respondent's complaint brought on 9/6/05.

The Georgia Court of Appeals decision issued regarding the 7/27/05 and 9/6/05 hearing appeals by Petitioner are included in pertinent part herein.

ARGUMENT

I. Summary of Argument

As A Supplement to the Argument Filed In the Petition for Writ of Certiorari By Petitioner On May 15, 2006

It is the Petitioner's continued argument that 12/1/04 hearing was conducted in the presence of a trial court judge who maintains a pervasive bias against the Petitioner and such pervasive bias has manifested itself in various words and actions throughout the proceedings in this case: before, during and after the 12/1/04 hearing.

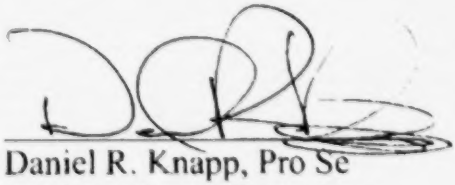
For the Petitioner to endure continual pervasive bias by the trial court judge has caused the Petitioner to endure a tortuous sequence of events which includes repeated incarceration by a trial court judge who has knowingly arrived at conclusions against the weight of the evidence presented and who has acted in a manner inconsistent with being fully informed as to the expired nature of the court orders in question and the improper dates on complaints cited against the Petitioner. However, the trial court judge, Judge Robert Mitchum, has maintained a pervasive bias against the Petitioner ever since the Petitioner attempted on 9/1/04 to void the court issued 5/18/04. This pervasive bias has

become most evident in the trial court judge willingness to proceed along a tortuous path of incarcerating the Petitioner without proper legal notice. One only need consider the trial court judge's original, and now continued, insistence that he reviewed a Georgia Court of Appeals Remittitur well before it was ever issued to the trial court to objectively conclude that the trial court judge's thinking lacks the clarity necessary to preside in this case in a fair and unbiased manner. In fact, numerous examples of bias that occurred either prior, during or after the 12/1/04 hearing have been citied in this Supplemental Brief and in the original 5/15/06 Petition. These examples of bias can only leave an objective observer to conclude thatthis case is one characterized by pervasive bias on behalf of the trial court judge's thoughts, words and actions. This pervasive bias on behalf of the trial court judge did in fact preclude a fair trial for the Petitioner on 12/1/04 in violation of the Petitioner's due process rights as afforded the Petitioner by the United States Constitution Fifth Amendment.

CONCLUSION

Daniel Knapp's hearing conducted on 12/1/04 was conducted in violation of due process rights afforded the Petitioner by the United States Constitution Fifth Amendment and, therefore, the 12/1/04 trial court decision should be reversed, or in the alternative, reversed and remanded for a fair hearing.

Respectfully Submitted, This 10th day of September, 2006.



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APPENDIX

THIRD DIVISION
BLACKBURN, P. J.,
MIKELL and ADAMS, JJ.

May 12, 2006

In the Court of Appeals of Georgia

A06A0119. KNAPP v. CROSS.
A06A0697. KNAPP v. CROSS.

ADAMS, Judge.

A06A0119 in pertinent part states:

...regardless of whether aspects of the May 18 order were still in effect at the time of Knapp's alleged contemptuous behavior, Knapp was given no notice of allegations that he was charged with contempt of the May 18 order prior to the hearing. ...For these reasons, the contempt order of July 27, 2005 is reversed and the case remanded for a determination of whether the evidence presented at the July 27, 2005 hearing supports a finding of contempt of the December 1, 2004 order.

A06A0697 in pertinent part states:

...Mr. Knapp cannot be held in contempt of an order that was no longer in effect. Cross did not seek, nor did the court find that Knapp was in contempt of the correct order – the December 1, 2004 order. The order of September 6, 2005 is therefore reversed.

Judgment reversed and case remanded in Case No. A06A0119. Judgment reversed in Case No. A06A0697. Blackburn, P.J., and Mikell, J., concur.

REMITTITUR

Court of Appeals of the State of Georgia
ATLANTA, JULY 19, 2005

The Court of Appeals having met, the following judgment was rendered:

COURT OF APPEALS CASE NO. A05A1055
DANIEL KNAPP V. LONNIE R. CROSS IV

This case came before this court on appeal from the SUPERIOR Court of Gwinnett County; it is considered and adjudged that THE JUDGMENT OF THE COURT BELOW BE AFFIRMED. ANDREWS, P.J., PHIPPS AND MIKELL, JJ., CONCUR. LC NUMBERS: 04A052490

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta, **FEB 1 6, 2006**

I certify that the above is a true extract from the minutes of the Court of Appeals of Georgia Witness my signature and the seal of said court hereto affixed the day and year last above written.
s/ William L. Martin, III

Court of Appeals Cost $80.00. O.C.G.A. Sec. 5-6-10.
No costs are payable to the Court of Appeals.
Stamped:
Filed In Office Clerk Superior Court
Gwinnett County, GA 2006 Feb 21 PM 4:52,
Tom Lawler, Clerk

c

IN THE SUPERIOR COURT OF
GWINNETT COUNTY, STATE OF
GEORGIA

Lonnie Cross IV
Plaintiff
vs.
Daniel Knapp
Defendant

Civil Action No. 04-A-05249-0

RULE NISI

The ( ) Plaintiff (X)Defendant having filed a **Motion For Contempt** the FAMILY VIOLENCE PROTECTIVE ORDER entered by the court in this case on the **9th of November 2004.**

The Plaintiff and Defendant are ordered to appear before this Court on the **26th day of July, 2006**, at **1:30 p.m.** in courtroom **1D,** of the Gwinnett County Justice and Administration Center at 75 Langley Drive, Lawrenceville, Georgia for a hearing on the motion. The order entered by this court shall remain in effect until the above date or the expiration of the order by operation of law.

So ordered, this **27th** day of **June, 2006**.

s/ Robert Waller
Judge, Superior Court
By designation

STAMPED:
FILED IN OFFICE
CLERK OF SUPERIOR COURT
GWINNETT COUNTY, GA
2006 JUN 27 PM 3:12
TOM LAWLER , CLERK

Georgia Supreme Court

Rules

I. GENERAL

Rule 6. Frivolous Appeal

The Court may...Upon filing of the remittitur in the trial court, the penalty may be collected as are other money judgments.

Georgia Court of Appeals

Rules

Section XV. REMITTITUR

Rule 39. Transmittal

(a) Remittiturs shall be transmitted to the clerk of the trial court ... unless a motion for reconsideration or notice of intention to apply to the Supreme Court of Georgia for writ of certiorari has been filed.

e

IN THE SUPERIOR COURT OF
GWINNETT COUNTY, STATE OF GEORGIA

Lonnie Cross IV
Plaintiff
vs. Civil Action No. 04-A-05249-0
Daniel Knapp
Defendant

MOTION FOR CONTEMPT

DEFENDANT SHOWS THAT PLANTIFF HAS ABUSED STATUE AS HE IS NOT IN FEAR OF DEFENDANT AND DEFENDANT HAS NOT HURT OR THREATENEDTO HURT PLANTIFF IN ANY WAY WHATSOEVER. PLANTIFF IS THE PARTY TO THIS ACTION WHO HAS CAUSED ANY PROBLEMS BETWEEN THESE PARTYS THROUGH: **1)** CONTINUED USE OF AND CONTINUED THREATENED USE OF PROFANE LANGUAGE IN THE PRESENCEOF MINORS, DEFENDANT, AND DEFENDANT'S FAMILY; **2)** HARASSING , PROVOKING AND INTIMIDATING DEFENDANT THROUGH PLACEMENT OF NO TRESPASSING SIGNS WHICH SERVE NO LEGITIMATE PURPOSE; **3)** HARASSING AND INTIMIDATING DEFENDANT BY MAINTAINING AND ALSO FAILING TO MAINTAIN A STRING FENCE THAT SERVES NO LEGITIMATE PURPOSE THAT HAS OBSTRUCTED DEFENDANT'S USE OF DEFENDANT'S REAL PROPERTY AND HAS ENDANGERED CHILDREN AND POSSIBLY DOMESTIC ANIMALS ATTEMPTING TO ENTER DEFENDANTS REAL PROPERTY; **4)** CONTINUING TO

ENTER FALSE STATEMENTS ON MOTIONS TO THE COURT IN AN ATTEMPT TO ADVERSELY PREJUDICE THE COURT AGAINST DEFENDANT; **5)** REPEATEDLY ENTERING FALSE TESTIMONY WHILE UNDER OATH IN RELATED COURT HEARINGS.

s/ Daniel R. Knapp **11/9/04**

STAMPED:

FILED IN OFFICE
CLERK OF SUPERIOR COURT
GWINNETT COUNTY, GA
04 NOV -9 PM 2:22
TOM LAWLER, CLERK

g

I HAVE A PROCEDURAL QUESTION FOR THE MAGISTRATE ON DUTY

Date *9/1/04* **Time** *11:15 AM* **Time Heard**

My name and daytime telephone number(s) are:
DANIEL KNAPP *770.932.8072*
My speaking to the magistrate relates to: (check as applicable and write out question(s)):
[*X*] Procedures for other Mag.Ct.matters [*X*] Other
My procedural question is:
WHAT FORM CAN I USE TO REQUEST COURT ORDER 04-A-5249-0 (STALKING SIX MONTH P.O.) BE REVIEWED AND VOIDED BASED ON THE FACT EVIDENCE PRESENTED AT HEARING (I.E., VIDEOTAPE OF PETITIONER THREATENING CONTINUED VERBAL ABUSE AND SEPARATE VIDEOTAPE OF PETITIONER USING VERBAL ABUSE) WERE NOT REVIEWED BY COURT ALTHOUGH THEY WERE MADE AVAILABLE TO THE COURT BY RESPONDENT? THE ORDER STATES "HAVING HEARD THE EVIDENCE PRESENTED..." BUT THAT IS NOT A TRUE CONDTION FOR THE ORDER TO BE ISSUED. THE CONTENT OF THE VIDEOTAPES, ALTHOUGH NOT TRANSCRIBED FOR THE HEARING, IS NOW AVAILABLE FOR REVIEW IN FULL TEXT FORM.
Judge's Comments: [*X*] Seek advice from private attorney of their choosing
Signature of Judge hearing matter: **s/ R. W. Mitchum**
Stamped:
FILED IN OFFICE
CLERK SUPERIOR COURT
2006 JAN 20 PM 2:29
TOM LAWLER, CLERK

h

I HAVE A PROCEDURAL QUESTION FOR THE MAGISTRATE ON DUTY

Date ***7/26/06*** **Time** ***2:25 PM*** **Time Heard** .

My name and daytime telephone number(s) are:
DANIEL KNAPP
770.932.8072

My speaking to the magistrate relates to: (check as applicable and write out question(s)):

[*X*] Other

My procedural question is:

WHAT FORM IS USED TO MAKE A COLLATERAL ATTACK PER O.C.G.A. 9-11-60 TO VOID AN ORDER?

Judge's Comments: (none)

Signature of Judge hearing matter:

s/ Michelle Knight

Opposing Counsel's Website Biography

Jan McKinney Biography
In Pertinent Part From Web Page Address:
http://www.westernroo.com/slizlaw/fr_main.htm

Years in practice: 25, including seven years as a Magistrate judge in Gwinnett County. Jan was admitted to State Bar of Georgia May 1979, after graduating from the Columbia Southern School of Law.

In 1997, Jan was appointed a Magistrate Judge of Gwinnett County. Her appointment was later extended by the Superior Court Judges and Chief Magistrate Warren Davis.

Transcripts

September 15, 2004
Gwinnett County Superior Court
Judge Robert Mitchum Presiding

Pg 10 Line 9 thru 13:

The Court: "On the other one, telling you to get a lawyer, that I've already requested the sheriff to appear at the courtroom to arrest you. Well, I don't remember the arrest you stuff, unless you were making a pest of yourself and weren't going to leave."

July 27, 2005
Gwinnett County Superior Court
Judge Robert Mitchum Presiding

Page 19 Line 24-25 and Page 20 Line 1-5:

Mr. Hill (Counsel for Petitioner): "...Mr. Cross (Respondent) has asked the Court, as you know, to make this temporary into a permanent restraining order, which was granted. And my client's position, Judge, is that the TPO has gone. That's done. That's over with, and the only thing we've got here is the permanent restraining order and we're on contempt for a violation of that permanent restraining order...."

September 6, 2005
Gwinnett County Superior Court
Judge Robert Mitchum Presiding

Page 24 Line 13 thru 18:

Mr. Knapp: Has the Remittitur been returned to the trial court?

The Court: I got my copy a couple of weeks ago.

Mr. Knapp: Okay. Well, then I'm unaware because I've not known that.